CF0000061694

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Criminal Appeal No. 1761 /97.

APPELLANT (IN JAIL) — ManBodh aged about 34 years
son of Pavan Say Gond
R/o village Karampur
PS Jay Nagar, Tahsil Surajpur
District Sarguja M.P.

-Versus-

Respondent — State of Madhya Pradesh

CRIMINAL APPEAL U/S 374(2)Cr.P.C.

CONVICTION	SENTENCE
U/s 302 IPC	R.I. for life and fine of Rs.5,000/- in default of payment of fine further R.I. for 2 Years..

11587

Filed on 26.8.97
by Shri A.Gupta Advocate

2685
Rto. A.R.

(18)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 1761 of 1997

Manbodh

Versus

State of Madhya Pradesh

JUDGEMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C.BHADOO
Judge
/0 / 04 /2006

POST FOR JUDGMENT ON 12 - 4 - 2006

Sd/-
DHIRENDRA MISHRA
Judge

(19)

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1761 of 1997

Appellant : Manbodh

Vs.

Respondent : State of Madhya Pradesh

Shri Praveen Das learned counsel for the appellant.

Shri U.N.S. Deo learned Additional Public Prosecutor for the respondent/State.

JUDGMENT

(Delivered on 11.04.2006)

Dhirendra Mishra, J

The appellant has preferred this appeal under section 374(2) of the Code of Criminal Procedure questioning the legality and correctness of the impugned judgment dated 29.7.1997 passed by learned Additional Sessions Judge, Manendragarh (Sarguja) in ST No. 354/1993 convicting the accused/appellant under section 302 of the IPC for causing homicidal death of his wife Rampati Bai, and sentencing him to undergo imprisonment for life and pay fine of Rs. 5000/-, in default of payment of fine to further undergo RI for two years.

2. Case of the prosecution in brief is that appellant himself went to police station Jainagar along with Jamasadar, Phool Sai and watchman of the village and gave merg intimation of Ex. P-15 mentioning therein that on 25.2.1993 his wife Rampati Bai had consumed excessive liquor for which he had reprimanded her and this was seen by the brother of the deceased also. It was also stated that she slept separately in the night. On 26.2.1993 in the morning he saw that she was dead. Thereafter, he informed Patel of the village about the incident. After registering the merg Station House Officer proceeded for the place of incident and suspecting the death of Rampati Bai as homicidal he recorded Dehati Nalsi Ex. P-16.

Inquest over the body of the deceased was performed vide Ex. P-8 after due notice to the witnesses in their presence. During inquest Station House Officer found numerous injuries over the body of the deceased. At three places in the stomach and at two places over the chest burn injuries were noticed, abrasions were also noticed over her left year, left knee, right leg and right elbow. He also noticed cut injury over the right side of her vagina. Body of the deceased was lying on the floor of verandah. During investigation on basis of memorandum of the appellant Ex. P-2 blood stained club was seized vide Ex. P-3. Plain and blood stained soil was also seized from the place of incident vide Ex. P-4. Blood stained T shirt and lungi were seized vide Ex. P-5. Sealed packet containing petticoat, blouse and sari of the deceased sent by the doctor was seized vide Ex. P-12. Site plan Ex. P-14 was prepared by Halka Patwari. First Information Report Ex. P-17 was registered. Dead body was sent for post mortem examination to Primary Health Centre Vishrampur vide Ex. P-18. Dr. K.K. Tamrakar PW-5 conducted the post mortem examination on the body of the deceased who submitted the post mortem report Ex. P-10. Doctor opined that cause of death was coma due to head injury and the death was homicidal in nature. Club seized from the appellant was sent for examination to Dr. Tamrakar who opined that all the injuries except injuries No. 1, 14 and 18 could be caused by the club so seized. Opinion of the doctor is Ex. P-11. After completion of investigation charge sheet was filed under section 302 of the IPC in the Court of Judicial Magistrate First Class Surajpur who in turn committed the case to the Court of Session Judge Ambikapur from where learned Additional Session Judge, Manendragarh received the case on transfer for trial.

3. Learned Additional Session Judge framed charge under section 302 of the IPC against the appellant. Appellant abjured his guilt. Prosecution in order to establish the charge against the appellant has examined as many as nine witnesses. Somar Sai was examined as court witness No.1. Thereafter, statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied

the circumstances appearing against him in the case of the prosecution. In reply to question No. 24 the appellant denied that he lodged the merg intimation Ex. P-15 informing that his wife died by consuming excessive liquor. He pleaded his innocence and false implication in the case and took the defence that he was on duty at the relevant time and was not at home and stated that when he returned from duty he found the dead body of his wife at some distance under a tree. Thereafter, he called Gayaram and Jamasadar and brought the dead body to the courtyard of his house and thereafter watchman of the village lodged the report in the police station. He also examined Gayaram and Jamasadar as defence witnesses No. 1 and 2.

4. Homicidal death of Rampati Bai is not in dispute. Even otherwise, looking to the injuries noticed in the inquest report as also in the post mortem report which have been duly proved by K.R. Kamre, investigating officer PW-9 and also Dr. Tamrkar PW-5, homicidal death is established.

5. The only question to be decided in this appeal is whether the prosecution has been able to establish the involvement of the appellant in the crime in question.

6. There is no eyewitness to the incident and the entire case of the prosecution rests on circumstantial evidence.

7. Learned counsel for the appellant submits that the learned trial Court has convicted and sentenced the appellant solely on the basis of the circumstance that the appellant himself gave merg intimation in the police station falsely stating that his wife died because of consuming excessive liquor and that in the night of incident the appellant was present in his house along with his wife and in the morning her dead body was found in his house with multiple injuries and also that the defence of alibi taken by the accused that in the night of incident he was on duty has also been found to be false. It is further argued that Vipin PW-2 in paragraph No.5 of his statement has stated that inquest over the dead body of the deceased

was performed some 100 meters away under a banyan tree. Defence witness Jamasadar has also stated in paragraph 2 of his statement that dead body of the deceased was lying under the banyan tree. Similar is the statement of Gayaram DW-2. However, the court below has ignored the above statements of these witnesses and held that dead body of the deceased was found in the house of the appellant. It is further argued that there is no evidence available on record to show that the appellant was present in the house in the night of incident. On the contrary DW-1 Jamasadar has categorically stated that on the night of incident he had gone to the house of the appellant to request him to inform his office that he would not be able to attend duties as his daughter was suffering from fever. However, he met his wife Rampati Bai who was standing at the door and stated that Manbodh had gone to his office and thereafter in the next morning when he was going to call the doctor, he saw the body of deceased Rampati Bai lying under a banyan tree and at the same time Manbodh returned from duty and all of them identified the body to be of wife of Manbodh, In the cross examination the prosecution has not been able to elicit anything to discredit this witness whose statement is duly corroborated by the statement of Gayaram DW-2.

8. On the other hand learned counsel for the respondent/State supported the impugned judgment of the trial Court.

9. We have heard learned counsel for the parties and perused the material available on record.

10. Learned trial Court has convicted the appellant on the basis of circumstantial evidence and the circumstances relied upon by the prosecution are summarized hereunder:

(i) that the appellant who is the husband of the deceased gave false information to the police that his wife died because of consuming liquor;

(ii) that dead body of the deceased was found in the verandah of the house of the accused with multiple injuries;

(iii) that appellant took a false plea of alibi that in the night of incident he had gone to his duty and he found the dead body of his wife under a banyan tree only after he returned from duty in the morning.

11. So far as the first circumstance is concerned PW-9 Station House Officer, Mr. kamre has proved the document of Ex. P-15 and stated that on 26.2.1993 at about 10 p.m. accused gave information that his wife died after consuming liquor. The accused came to lodge the report with one Phool Sai and the Chowkidar of the village. Thereafter, this witness recorded his information as merg No. 13/1993 and proceeded for the place of occurrence in the following morning. Defence witness Jamasadar has also stated in paragraph 3 of his statement that he along with Manbodh, Agnu and Phool Sai went to the police station to lodge the report at about 10-10.30 a.m. However, their report was registered in the night at 8-9 p.m. after return of the Station House Officer. Manbodh lodged the report. DW-2 Gayaram has also stated in paragraph 2 of his statement that Phool Sai, Jamasadar and Manbodh went to the police station to lodge the report. Though the appellant has denied lodging of merg intimation but this fact has been duly established from the statement of above witnesses and therefore, we are of the considered opinion that the Court below has not committed any illegality by arriving at the conclusion that merg intimation Ex. P-15 was in fact lodged by the appellant wherein he gave false intimation to the police that his wife died due to consuming excessive liquor.

12. As far as the second circumstance is concerned, the defence of the appellant is that dead body of the deceased was not found in his house but it was found some 100 meters away from his house under a banyan tree. Statements of Jamasadar and Gayaram have been referred to in this regard who have stated that after discovery of dead body from under a banyan tree they went to police station and lodged the report whereupon police personnel said that they would be coming in the morning and investigate the matter and till

then body should be kept in the house of the appellant. Thereafter, they took the dead body from under the banyan tree to the courtyard of Manbodh. PW-2 Vipin has also stated that inquest proceedings were conducted by the police some 100 meters away from the house of Manbodh under a banyan tree. However, defence of the appellant in this regard and the account given by the defence witnesses is falsified by the appellant himself who has stated in reply to question No. 42 that the dead body was found under a banyan tree, he called Gayaram, Jamasadar, lifted the dead body and brought it to his courtyard and thereafter village watchman gave the information in the police station. On the contrary, PW-1 Alam Sai, PW-3 Sukhminbai and PW-4 Ramdeo who are the signatories to the inquest have stated that they were present at the time of inquest and saw that body of the deceased was lying in the courtyard of Manbodh. From perusal of the inquest report P-8 and the statement of the Station House Officer PW-9 it is evident that the body of the deceased was lying in the verandah and as it was dark in the verandah, the body was shifted to the courtyard and thereafter inquest was performed. So far as statement of PW-2 Vipin is concerned, initially he has stated that the dead body of the deceased was lying in the backyard of the house of the appellant but subsequently he stated that inquest was performed some 100 metrs away from the house of Manbodh under a banyan tree. Therefore, the Court below has rightly rejected the version of this witness and accepted the version recorded in the inquest report duly proved by the witnesses and Station House Officer. Thus we are of the considered opinion that the court below has rightly held that the body was found in the house of accused.

13. So far as defence of alibi of the accused that in the intervening night of 25/26.2.1993 he was on duty and he came to know about the death of his wife after his return from the duty, is concerned, this defence has rightly been disbelieved by the court below as in the merg intimation P-15, the appellant has given the information that he

reprimanded his wife in the evening of 25.3.1993 as she had taken excessive liquor and thereafter she slept separately. There is no mention in this merg intimation that the appellant was on duty in the intervening night of 25/26.2.1993. There is no suggestion put to the Station House Officer on behalf of the accused that the appellant was not present in the house in the night of incident and thus the defence taken subsequently is an afterthought.

14. Thus considering the proved circumstances that the appellant is the husband of the deceased who died in his house and that the appellant gave false intimation to the police that his wife died due to consuming excessive liquor though number of injuries were present on the person of the deceased which were visible as per the statement of defence witnesses and further that the appellant took a false plea that the body was found under a banyan tree, we are of the considered opinion that the prosecution has been able to establish the involvement of the accused in causing death of his wife through circumstantial evidence. In our opinion the court below has not committed any illegality or infirmity in holding the appellant guilty for causing the death of his wife and convicting him under section 302 of the IPC.

15. In the result, there is no force in the appeal and the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge